

# **EXHIBIT K**

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

16 Cr. 0746 (PKC)

5 DAVID BERGSTEIN,

6 Defendant.

7 -----x

February 15, 2018  
10:10 a.m.

8 Before:

9 HON. P. KEVIN CASTEL,

10 District Judge

11 APPEARANCES

12 GEOFFREY S. BERMAN

13 Interim United States Attorney for the  
Southern District of New York

14 BY: EDWARD IMPERATORE  
ROBERT ALLEN  
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17 Attorneys for Defendant

18 BY: THOMAS H. BIENERT, JR.  
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20 BY: ANDREW L. FISH

21 - also present -

22 Ellie Sheinwald, U.S. Paralegal Specialist

23 Sarah Emmerick, U.S. Paralegal Specialist

Caroline Howland, Defense Paralegal Specialist

24 SA Shannon Bieniek, FBI

1 Technologies and I met him many times during my 13-year  
2 employment there.

3 Q. Generally speaking, what did Dr. Swartz do for a living?

4 A. Well, he was -- he is scientist and engineer who developed  
5 the basic patents which enable the handheld laser scanner.

6 THE COURT: Move on. Move on, Mr. Imperatore.

7 MR. IMPERATORE: Yes, your Honor.

8 Q. Did there come a time when you went to work for Dr. Swartz  
9 personally, putting aside the work that you did at Symbol?

10 A. Yes. Soon after I left Symbol in May of 2001, I started a  
11 relationship with Dr. Swartz within weeks of leaving Symbol  
12 Technologies.

13 Q. After you left Symbol, what type of work have you done for  
14 Dr. Schwartz over the years.

15 A. Well, I have prepared his personal return and the return  
16 for his family partnerships, his childhood trusts, his sports  
17 foundation.

18 Q. When you say prepared his return, you are referring to a  
19 tax return?

20 A. Yes.

21 Q. Now focusing on the period roughly 2002 through the  
22 present, how often have you been interacted with him roughly?

23 A. From 2002 to 2004 it might have been once a month. June,  
24 July 2004 to present date is almost weekly.

25 Q. On what types of issues do you deal with him?

1           It goes on to say, Swartz IP is entering into this  
2 funding agreement and will use a portion of the funds to make  
3 investments in certain targets we have identified.

4           Now, did Swartz IP ever have any of Jerry Swartz's  
5 money in it?

6       A.   No.

7       Q.   When it refers here to identifying certain targets down  
8 here in the second paragraph, did Dr. Swartz and Mr. Bergstein  
9 identify any targets together?

10      A.   To my knowledge, no.

11      Q.   Up at the top it refers to "holding the interests that  
12 Jerry and I have together."

13           As of November 17th, 2011, did Mr. Bergstein and  
14 Dr. Swartz hold any interests together?

15      A.   No.

16      Q.   What was your reaction to seeing that this entity, Swartz  
17 IP, had Dr. Swartz's last name in?

18      A.   I was very unpleasantly surprised.

19      Q.   Why?

20      A.   Well, we had communicated to Mr. Bergstein earlier that  
21 year -- I believe it was in August -- in an e-mail exchange  
22 that Dr. Swartz's name should not be used in the name of any  
23 company formed by Mr. Bergstein.

24      Q.   Why at that point did you not want Dr. Swartz's name in any  
25 company associated with Mr. Bergstein?

1 A. Well, I didn't believe in Mr. Bergstein was a trustworthy  
2 individual and I didn't want Dr. Swartz to be associated with  
3 him in any way.

4 Q. After you received this e-mail, did you speak with Mr.  
5 Bergstein?

6 A. Yes.

7 Q. In person or over the phone?

8 A. Over the phone.

9 Q. Who called whom?

10 A. I believe I called him. He may have called me.

11 Q. Why did you speak with Mr. Bergstein?

12 A. Well, to review the terms of the attached documents and  
13 also to restate our request to him that Jerry's name was not be  
14 used in the name of the company.

15 Q. Now, during that call did Mr. Bergstein indicate whether  
16 Swartz IP had any money in it at that time?

17 A. No.

18 Q. Did Mr. Bergstein say anything about Swartz IP holding any  
19 money or assets of Jerry Swartz's?

20 A. No.

21 Q. Did Mr. Bergstein ask Dr. Swartz to contribute any money?

22 A. No.

23 Q. Did Mr. Bergstein ask you to be the chief financial officer  
24 or CFO of Swartz IP?

25 A. No.

1 your presence?

2 A. Yes. Because we met at that time on a weekly basis, and I  
3 presented these documents out for him and then reviewed it with  
4 him at our next meeting.

5 Q. What did that signify when are Dr. Swartz crossed out his  
6 name, Swartz, in the name Swartz IP Services Group?

7 A. Again, it emphasized that he did not want his name to be  
8 used in the name of any company formed by Mr. Bergstein.

9 Q. Why not?

10 A. Well, for the same reasons that I didn't want Mr. Bergstein  
11 to use his name, that we didn't want Dr. Swartz to be  
12 associated with Mr. Bergstein in this regard.

13 Q. Was this ultimately communicated to Mr. Bergstein that  
14 Dr. Swartz's name should not be used in any company name of Mr.  
15 Bergstein's?

16 A. Yes. We communicated that previously and he acknowledged  
17 that and he acknowledged it again shortly after receipt of this  
18 document.

19 Q. Now, did Dr. Swartz have any involvement in or association  
20 with something called Swartz IP Services Group, Inc.?

21 A. No.

22 Q. Did Dr. Swartz sign any documents on behalf of Swartz IP?

23 A. No.

24 Q. Did you?

25 A. No.